

LEGAL NOTICE
Notice of Proposed Rulemaking
Public Hearing

Notice is hereby given of proposed rulemaking and public hearing by the Department of Labor and Industrial Relations (DLIR), Hawaii Occupational Safety and Health Division (HIOSH), to Title 12, Subtitle 8, Part 1, Chapter 52.1, Hawaii Administrative Rules (HAR), pursuant to the Occupational Safety and Health Law, Chapter 396, Hawaii Revised Statutes (HRS), and the Hawaii Administrative Procedure Act, Chapter 91, HRS.

The proposed amendments bring the HIOSH standards into conformity with the federal Occupational Safety and Health Administration's (OSHA) standards for recording and reporting occupational injuries and illnesses. The Occupational Safety and Health Act of 1970 permits states to operate their own occupational safety and health programs as long as the development and enforcement of safety and health standards are "...at least as effective in providing safe and healthful employment or places of employment..." as the OSHA standards. Therefore, HIOSH must adopt the OSHA standards.

The public hearing will consider the amendments to Chapter 52.1, HAR, "Recording and Reporting Occupational Injuries and Illnesses", which include the following substantive amendments:

1. Amendments to section 12-52.1-1 "State amendments to 29 C.F.R. §1904.":
 - a. §12-52.1-1(a)—changes the reporting requirements from any fatality, hospitalization of three or more employees or property damage in excess of \$25,000 to any fatality, the inpatient hospitalization of an employee, an employee's amputation or loss of an eye, or property damage in excess of \$25,000.

- b. §12-52.1-1(b)—modifies Appendix A, titled “Non-Mandatory Appendix A to Subpart B – Partially Exempt Industries”, dated March 17, 2017, which is made part of Chapter 52.1 and located at the end of Chapter 52.1. Appendix A exempts certain industrial sectors (retail, service, finance, insurance and real estate) from reporting and recording requirements if they are in a relatively low hazard sector. Lower-hazard industries in OSHA’s previous rules were classified within Standard Industrial Classification (SIC) major industry groups 52-89 and have an average Lost Workday Injury and Illness (LWDII) rate at or below 75 percent of the three-year-average national LWDII rate for private industry.
- The LWDII rate is an incidence rate that represents the number of non-fatal injuries and illnesses resulting in days away from work or job restriction per 100 full-time-equivalent employees per year. The LWDII data used to compile the previous list of partially-exempt industry groups were taken from the Bureau of Labor Statistics (BLS) Survey of Occupational Injuries and Illnesses (SOII) for the years 1996, 1997, and 1998. The current OSHA list of partially-exempt industry groups is based on 2007-2009 injury/illness data from industry groups in the North American Industry Classification System (NAICS) 44-81. Because overall injury and illness rates have been declining, the threshold Days Away, Restriction, or Transfer (DART) rate for partial exemption is 1.5 (75% of the 2007-2009 average private industry DART rate of 2.0), down from the previous 2.325 (75% of the 1998 average private industry LWDII rate of 3.1).
- HIOSH modifications to Appendix A include the following:

a. DLIR's Research & Statistics Office's annual Employment and Payrolls in Hawaii provides tabulations of the number of reporting units, monthly employment, average annual employment, total wages and average annual wage for the State of Hawaii. The 2014 edition, published in October 2015, indicated that some NAICS industries were not present in Hawaii. Therefore, HIOSH modified Appendix A to exclude the following NAICS industries:

- I. 4861 Pipeline Transportation of Crude Oil
- II. 4862 Pipeline Transportation of Natural Gas
- III. 4869 Other Pipeline Transportation
- IV. 5173 Telecommunications Resellers
- V. 5181 Internet Service Providers and Web Search Portals
- VI. 5211 Monetary Authorities – Central Bank

b. HIOSH modified Appendix A to exclude industries with a 3-year-average DART Rate, for the years 2007, 2008, and 2009, above 75% of the 3-year-average private industry DART rate in Hawaii based on the same calculation used in the OSHA partial exemption list:

- I. 4412 Other Motor Vehicles
- II. 5111 Newspaper, Periodical, Book, and Directory Publishers
- III. 5112 Software Publishers
- IV. 5312 Offices of Real Estate Agents and Brokers

- V. 6244 Child Day Care Services
 - VI. 7114 Agents and Managers for Artists, Athletes, Entertainers, and Other Public Figures
 - VII. 7115 Independent Artists, Writers, and Performers
 - VIII. 7213 Rooming and Boarding Houses
 - IX. 7221 Full-Service Restaurants
 - X. 7222 Limited-Service Eating Places
 - XI. 7224 Drinking Places (Alcoholic Beverages)
 - XII. 8112 Electronic and Precision Equipment Repair and Maintenance
 - XIII. 8114 Personal and Household Goods Repair and Maintenance
 - XIV. 8121 Personal Care Services
 - XV. 8122 Death Care Services
 - XVI. 8131 Religious Organizations
 - XVII. 8132 Grantmaking and Giving Organizations
 - XVIII. 8133 Social Advocacy Organizations
 - XIX. 8134 Civic and Social Organizations
 - XX. 8139 Business, Professional, Labor, Political, and Similar Organizations
- c. HIOSH modified Appendix A to exclude the following three industries because they are part of the HIOSH Strategic Plan to reduce injuries and illnesses in Hawaii's workplaces:

- I. 4812 Nonscheduled Air Transportation
 - II. 4879 Scenic and Sightseeing Transportation, Other
 - III. 4885 Freight Transportation Arrangement
- c. §12-52.1-1(b)—amends the reporting requirements in conformance with the proposed §12-52.1-1(a).
 - d. §12-52.1-1(e)—amends the reporting requirements in conformance with the proposed §12-52.1-1(a) and adds the requirement for reporting of such injuries to HIOSH within twenty-four hours.
 - e. §12-52.1-1(g)—adds a new subsection that defines amputation as follows: “An amputation is the traumatic loss of a limb or other external body part. Amputations include a part, such as a limb or appendage, which has been severed, cut off, amputated (either completely or partially); fingertip amputations with or without bone loss; medical amputations resulting from irreparable damage; and amputations of body parts that have since been reattached.”
 - f. §12-52.1-1(h)—a re-lettered subsection (from “g” to “h”) that specifies exempt industries by NAICS code instead of the obsolete SIC code. The U.S. Department of Labor is transitioning from using SIC codes to NAICS codes.
2. Amendment to section 12-52.1-2 “Incorporation of federal standard.”: Amends the applicable Code of Federal Regulations from 2011 to 2016.
- A copy of the proposed rule changes will be made available for public viewing from the first working day that the legal notice appears in the Honolulu Star-Advertiser, Hawaii Tribune Herald, West Hawaii Today, The Maui News, and The Garden Island, through the day the public hearing is held, from Monday – Friday, between the hours of 2:00 p.m. and 4:00 p.m., at the

following locations: 830 Punchbowl Street, Room 423, Honolulu, Hawaii 96813; 75 Aupuni Street, Hilo, Hawaii 96720; 2264 Aupuni Street, Wailuku, Hawaii 96793; and 3060 Eiwa Street, Lihue, Hawaii 96766.

Interested persons may request a copy of the proposed rules from HIOSH by written request mailed to 830 Punchbowl Street, Room 423, Honolulu, Hawaii 96813, by electronic mail at dlir.hiosh@hawaii.gov, or by telephone at (808) 586-9116. A copy of the proposed rules will be mailed to any interested person who requests a copy and pays ten cents per page plus postage. The proposed rules may be viewed at our website at <http://labor.hawaii.gov/hiosh/proposed-rules/>.

Interested persons may present at the public hearing any written or oral data, views, arguments, comments, and objections concerning the proposals on:

December 28, 2016

1:00 p.m.

Keelikolani Building

830 Punchbowl Street, Room 427

Honolulu, Hawaii 96813

The public hearing will be continued, if necessary, to a time, date, and place announced at the scheduled hearing.

Interested persons may submit written data, views, arguments, comments, and objections concerning the proposals to the Hawaii Occupational Safety and Health Division, 830 Punchbowl Street, Room 423, Honolulu, Hawaii 96813, or via electronic mail at dlir.hiosh@hawaii.gov. All submissions for the record must be received at or prior to the scheduled public hearing.

Auxiliary aids and services are available upon request. Call the Hawaii Occupational Safety and Health Division at (808) 586-9116 (voice), or dial 711 and then ask for (808) 586-9116. A request for reasonable accommodations should be made no later than ten working days prior to the needed accommodations.

Dated: November 27, 2016

LINDA CHU TAKAYAMA

Director

Department of Labor and
Industrial Relations

Equal Opportunity Employer/Program

Auxiliary aids and services are available upon request to individuals with disabilities.

TDD/TTY Dial 711 then ask for (808) 586-8866